

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6688 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

P A BUCH

Versus

STATE OF GUJARAT

Appearance:

MR DC RAVAL for Petitioners

MR VM PANCHOLI i/b M/S MG DOSHIT & CO for

Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/08/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioners, eight in number, who had applied for candidature at the Gujarat Civil Services Recruitment Examination held pursuant to the advertisement dated 1.10.1985 issued by the Gujarat Public Service Commission (GPSC), have challenged the

decision of the GPSC considering the petitioners to be ineligible for appearing at the said examination. By the interim order, this Court had directed the GPSC to permit the petitioners to appear at the examination without prejudice to the rights and contentions of the parties, but the results were not to be declared. Accordingly, the results of the petitioners were kept in abeyance while the results of other candidates were published on 30.11.1988. When this petition reached final hearing, this Court called upon the GPSC to declare the results of the petitioners also. Accordingly, the results of the petitioners were placed on the record of this petition on 26.7.1999. As per the said results, out of the eight petitioners, only two petitioners were successful, namely petitioner No. 1 Pankaj A Buch who was declared to have qualified for appointment to Class-II service and petitioner No. 6 P.B. Vaghela who was declared to have qualified for Class-I service. The rest of the petitioners having failed either at the written test or at the oral interviews would obviously be out of the reckoning and for them the petition has become infructuous. The contentions raised by the petitioners are, therefore, examined in the factual setting of petitioner Nos. 1 and 6 only.

2. Petitioner No. 1 Pankaj A Buch was born on 17.9.1955 and completed 28 years of age on 17.9.1983. Petitioner No. 6 P.B. Vaghela was born on 1.12.1954 and completed 28 years of age on 1.12.1982. The Gujarat Civil Services Recruitment Examination Rules, 1980 (hereinafter referred to as "the Examination Rules") contained in the Government Notification dated 1.4.1980 (Annexure "A" to the petition) lay down the rules for holding a combined competitive examination for recruitment to the posts mentioned in Schedule I to the Rules. The subject matter of this petition revolves round the interpretation of Rules 3, 7 and 10 and the same are quoted in extenso :-

"3. The Commission may hold a combined competitive examination ordinarily in the month of May for selection of candidates for recruitment to the post/s mentioned in Schedule I. The dates on which the examination will be held shall be fixed by the Commission.

7. Every year concerned Departments of the Secretariat shall intimate to the General Administration Department not later than the 15th August, the requirements of new recruits for the

different scheduled posts for the next year commencing with next April. The General Administration Department shall communicate the requirements of such new recruits to the Commission not later than the first week of October. Without waiting further for communication as such, if not received from General Administration Department timely, the Commission shall, in the month of November every year, notify its intention of holding the examination. However, subsequently, detailed advertisement shall be issued by the Commission immediately on receipt of such communication from General Administration Department.

10. A candidate for admission to the examination must have attained the age of 21 years and must not have attained the age of 28 years on the date mentioned by the Commission in the advertisement.

Provided that the upper age limit prescribed above shall be relaxable upto a maximum of five years if a candidate belongs to a Scheduled Caste or a Scheduled Tribe.

Provided further that the upper age limit shall be relaxable upto a maximum of ten years if a candidate is physically handicapped.

Save as provided above, the age limits prescribed, in no case, be relaxable."

(emphasis supplied)

3. The petitioners have made a grievance in the present petition that after publishing the advertisement in August, 1981, the GPSC issued the next advertisement only in October, 1985 and the GPSC did not issue any advertisement or hold any examination in 1982, 1983 and 1984 with the result that the petitioners who completed 28 years of age before 1.10.1985 were treated as having lost their chance for appearing at the examination for no fault of theirs. The statement at Annexure "B" to the petition give a detailed break-up of the vacancies of 1982, 1983 and 1984. According to the petitioners, the advertisement issued by the GPSC in 1985 for 101 Class-I posts and 188 Class-II posts were of vacancies carried forward from 1982, 1983 and 1984. The petitioners have further pointed out that it was in recognition of the

injustice caused to various prospective candidates on account of the GPSC not holding the examination at the relevant time that the State Government issued the resolution dated 16.11.1985 antedating the cut off date for the purpose of eligibility from 1.10.1985 to 1.4.1984 meaning thereby although the original advertisement dated 1.10.1985 issued by the GPSC required the candidates not to have completed 28 years of age on 1.10.1985, by the aforesaid resolution dated 16.11.1985 (Annexure "D") the cut off date was to be 1.4.1984. The petitioners have also challenged this resolution in for as the cut off date is not taken to 1982 because according to the petitioners, if the cut off date were fixed at 1-4-1982, all the petitioners would have been eligible to appear at the examination as none of them had completed 28 years of age by 1.4.1982. The learned counsel for the petitioners have vehemently urged that now when the results are placed on record of the present petition and petitioner Nos. 1 to 6 have been found to be qualified for Class-II and Class-I appointments as aforesaid, the petition deserves to be allowed.

4. On the other hand, Mr Pancholi, learned AGP for the respondents has opposed the petition and relying on the averments made in the reply affidavit has pointed out that the petitioners proceed on an incorrect and unwarranted assumption that no advertisement was issued in the year 1983. It is pointed out that the GPSC had issued an advertisement on 24.4.1983 inviting applications for appearing at the aforesaid examination. In fact, the GPSC has sought to explain why the examinations were not held in the year 1982 and 1984. It is stated that since the examinations pursuant to the advertisement dated 25.8.1981 were held in December, 1981 and the results thereof were not declared till November, 1982, the GPSC did not issue any advertisement in the year 1982. Thereafter the advertisement was issued on 24.4.1983 and the examinations were held in September, 1983 but the results of the said examinations were also not declared till June, 1985 and, therefore, no advertisement was issued in 1984 and it was thereafter on 1.10.1985 that the advertisement was issued in response to which the petitioners applied. However, all the petitioners had completed 28 years of age even on 1.4.1984 which was the relaxed cut off date as per Government Resolution dated 16.11.1985. The learned AGP has submitted that since the advertisement was issued in 1983, there was no need or justification for relaxing the upper age limit in the year 1983 and that the upper age limit was required to be relaxed because the examination was not held in the year 1984.

5. In rejoinder, the learned counsel for the petitioner had contended that even if the aforesaid reasoning were held to be correct, the respondents ought to have antedated the cut off date to 1.4.1982 or at least to 1.10.1982 on which date none of the petitioners had completed 28 years of age to which the learned AGP would submit that the petitioners had not challenged any action or inaction of the GPSC regarding the examination of 1982 and, therefore, it was too late in the day for the petitioners to pray for any relief in the present petition filed in the year 1985.

6. Having heard the learned counsel for the parties, it appears to the Court that the petitioners' grievance that the relaxation in the cut off date should not have been confined to 1.4.1984 has no substance because undisputedly the advertisement was issued by the GPSC on 24.4.1983 and, therefore, those of the petitioners who were eligible to apply in response to the said advertisement could very well have applied at that time. Admittedly, petitioner No. 1 Pankaj A Buch who was born on 17.9.1955 had completed 28 years of age only on 17.9.1983 and, therefore, he did have an opportunity to appear at the examination in response to the advertisement which was issued before he completed 28 years of age. In any case, he would not have been eligible to appear at the examination even if the advertisements were issued in 1981. Obviously he was ineligible to appear at the examination held pursuant to the advertisement dated 1.10.1985. Therefore, there is no substance in the grievance being made on behalf of petitioner No. 1.

7. As far as petitioner No. 6 - P.B. Vaghela is concerned, it is true that he completed 28 years of age on 1.12.1982 and no advertisement was issued in the year 1982. The case urged on behalf of the petitioners that in view of Rule 7 of the Examination Rules, the GPSC was required to notify its intention of holding the examination in November, 1981 as well as in November, 1982 and the same should have been followed by advertisements on receipt of the requisition from the General Administration Department. On behalf of the GPSC, however it is contended that Rule 3 of the Examination Rules gives a discretion to the GPSC and the GPSC is not bound to hold competitive examinations every year. It is submitted that the expression "may" in Rule 3 makes it clear that it is not mandatory for the GPSC to issue advertisement every year and that the reasons for not holding examinations in 1982 and 1984 as already

submitted above would in any case save its action from being branded as arbitrary.

8. Looking to the fact that the Examination Rules i.e. Rule 10 thereof prescribes the upper age limit and that the examination is for appointment to Class I and II posts in State Government services for which a large number of candidates prepare themselves, and when Rule 7 provides that the Commission shall in the month of November every year notify its intention of holding the examination, all these rules do lend credence to the arguments urged on behalf of the petitioners. The GPSC did not act in accordance with Rule 7 when it did not notify its intention of holding the examination in November, 1981 or November, 1982. In this sense, it can be said that petitioner No. 6 did have some legitimate grievance. However, petitioner No. 6 did not choose to challenge the inaction of the GPSC at the relevant time. Hence, permitting the petitioner to challenge such inaction of 1981-82 in the present petition filed in the year 1985 would mean overlooking the consideration that the petition suffers from delay, laches and acquiescence.

9. The learned counsel for the petitioners submitted that the vacancies of 1982, 1983 and 1984 were all carried forward and advertised in October, 1985. Hence, there was no delay on the part of the petitioners. There is nothing on record to show that the vacancies of 1982 and 1983 were also included in the advertisement of 1985.

The very fact that an advertisement was issued by the GPSC on 24.4.1983 and the examination pursuant to the said advertisement was held in September, 1983 shows that the petitioners' assertion is not borne out.

10. In the result, even while declaring that the GPSC did not act in conformity with Rule 7 of the Examination Rules, 1980 in not notifying in November, 1981 and November, 1982 its intention of holding the aforesaid competitive examination, this Court declines to grant relief to the petitioners for the reasons already recorded hereinabove.

11. Subject to the aforesaid observations, the petition fails and is dismissed.

Rule is discharged with no order as to costs.

Sd/-

(M.S. Shah, J.)